

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 86 of 1995

with

CRIMINAL REVISION APPLICATION No 87 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

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STATE OF GUJ

Versus

CHAMPAKSINH GULABSINH DARBAR

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Appearance:

1. Criminal Revision Application No. 86 of 1995

MR PS CHAMPANERI, ADDL.PUBLIC PROSECUTOR for Petitioner

MR YS LAKHANI, for the respondent

2. Criminal Revision Application No. 87 of 1995

MR PS CHAMPANERI, ADDL.PUBLIC PROSECUTOR for Petitioner

MR YS LAKHANI, for the respondent

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 02/04/96

COMMON ORAL JUDGEMENT

Present orders shall govern the disposal of these two Criminal Revision Applications, which are for the cancellation of the bail granted by the learned Sessions Judge, Junagadh, at Porbandar Camp, dated December 23, 1994.

The respondent-Champaksinh, who is common in both the revision applications, had submitted two applications, one from the jail and the other one, before the Court, through the learned Advocate, for obtaining the orders of bail. It is undisputed that, a case for the alleged commission of the offences punishable under Sections 20, 22, and 27 of the NDPS Act, 1985, came to be registered against him, vide C.R. No. 209 of 1994. After hearing both the sides, the learned Sessions Judge has granted the orders of bail and accordingly certain conditions came to be imposed. These orders, as indicated above, came to be pronounced on December 23, 1994. Both the applications, one sent from the jail and the second one, submitted to the Court through the learned Advocate were consolidated. Later on, the above said orders have been challenged, by filing the present two Criminal Revision Applications. Nonetheless, the prayer is for the cancellation of the bail.

It requires to be appreciated that, though the orders of bail could be passed on December 23, 1994, these applications for cancellation of the bail came to be presented on March 13, 1995. The matters were resting in the High Court and they came up before the learned Single Judge, for the first time, on 7th March 1996. It was made S.O. to 11th March 1996. On the said date, later on, the rule was made returnable. Non-bailable warrants against the respondent-accused returnable on 20th March 1996 were ordered to be issued. The respondent-accused wanted to say something against the said orders and when he was here, in the Court premises in pursuance of the above said non-bailable warrants, he came to be arrested on 28th March 1996. At present, when these two revision applications come up for hearing before me, the respondent-accused is behind the bars.

Learned Government Counsel Mr.P.S.Champaneri, who appears for the petitioner-State urges that, NDPS Act, 1985 is a special enactment with a view to curb the menace of the drugs and that the powers of the High Court to grant bail under Section 439 of the Code of Criminal Procedure, 1973 are subject to the limitations contained in the amended Section 37 of the NDPS Act, 1985 and therefore, it was not permissible for the learned

Sessions Judge to grant the bail to the respondent-accused. The prayer, therefore, is that, those orders by which he came to be released on bail, should be quashed and set aside.

The reference in this respect, requires to be made to the Supreme Court decision in NARCOTICS CONTROL BUREAU, APPELLANT v. KISHAN LAL AND ORS., RESPONDENTS, AIR 1991 S.C. 558. This decision lays down the principle as being canvassed by learned Government Counsel, Mr. Champaneri. The provisions contained in the amended Section 37 of the NDPS Act, 1985 would limit the scope and ambit of the provisions contained under Section 439 of the Code of Criminal Procedure, 1973.

But, the fact remains that, under Section 37 of the NDPS Act, 1985 also, it has been said that, the bail could be granted if the Court is satisfied that, there are reasonable grounds for believing that the accused is not guilty of such offence and that, he is not likely to commit any offence while on bail. It is true that, the learned Sessions Judge has not addressed himself to the question as to whether there were reasonable grounds for believing that the accused was not guilty of such an offence. To that extent, the orders passed by the learned Sessions Judge can be said to be below the expected mark.

But, I feel that, regard being had to the facts and circumstances of the case and also to the second part of Section 37(1)(ii), I should not interfere, at this juncture, and to venture the order of the cancellation of the bail. As indicated above, the orders of bail could be granted on December 23, 1994. The cancellation applications could be presented on March 13, 1995. The matters had rest peacefully here, in the High Court, upto 7th March 1996. During this long period, the accused was on bail and nothing untoward has happened. It can, therefore, be believed that, he is not likely to commit any offence while he shall be on bail.

Looking to this, feature of the case and the time-gap which has developed between the passing of the orders of bail and the hearing of the present revision applications, I am of the view that, when the respondent-accused has behaved and there is absolutely no complaint against him, these are not the fit cases in which, I order the cancellation of bail granted by the Court below. The present Criminal Revision Applications therefore, fail and they are hereby accordingly dismissed. Rule shall stand discharged in both the

matters.

The respondent-accused is behind the bars, in view of the duly executed non-bailable warrants against him. He should be set at liberty forthwith, if not required in any other criminal case or proceedings.

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